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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,701	08/27/2001	Eric Brown	Brown.E-12	5947

7590 05/19/2004

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EXAMINER

BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/816,701

Applicant(s)

BROWN, ERIC

Examiner

Igor Borissov

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 2-15 been renumbered 1-14.

Claims 1-14 are objected to because of following informalities: Phrases "video program", "video show" and "graphical image show" are used interchangeably throughout claims, which is confusing. Use of the same terminology is recommended.

Claim 5. Examiner believes that the phrase "patient specific data" should be substituted for "patient specific database".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-8 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marcus (US 6,032,156).

Marcus teaches a method and system for automated generation of media, comprising:

Claim 1. Entering medical data for each specific patient into the system (C. 6, L. 49-52); based on said entered information and medical condition which the patient has been diagnosed with, editor program produces a recommended decision list (*forming a*

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medical appraisal and communication objective) for further processing (C. 6, L. 65 – C. 7, L. 1-2); finalizing the decision list; composing a video program based on the finalized decision list (C. 7, L. 3-7); and providing the video program via Internet link (*posting and hosting*) (C. 11, L. 6), wherein said video program includes advertising data provided by an advertiser or a vendor (C. 11, L. 24-27).

Marcus does not specifically teach that said advertising data includes *sales oriented* information.

Official notice is taken that it is well known that vendors or merchandisers advertise their product to induce sales of their product.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Marcus to include that said advertising information included in said video program includes *sales oriented* information, because it would provide funds to business to operate.

Claim 2. See claim 1.

Claim 3. Said method, wherein said patient data is requested by the health care practitioner (C. 1, L. 26).

Claim 5. Said system, comprising: patient profile entry interface and data storing means; the Internet as communication means and video program producing means (C. 6, L. 49 – C. 7, L. 7; C. 11, L. 24-27). Accessing said video program through Internet link obviously indicate video program playback means.

Claim 6. See claim 5. As to information *is enabling for producing a graphical image show* is non-functional language and given no patentable weight. Claims Directed to an Apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959).

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987).

Claim 7. See claim 5. Presenting video and audio information over the Internet obviously indicates presenting graphic and text information simultaneously. As to

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information *written commentary* is non-functional language and given no patentable weight.

Claim 8. Said system, including relationship generating means (C. 3, L. 26-30).

Claim 11. Said system, including script generating means (C. 5, L. 44-45).

Claim 12. Said system, including graphics or charts creating means (C. 11, L. 45-46).

Claim 13. Said system, including video program editing means (C. 7, L. 3-7).

Claim 14. Said system, comprising: a personal data collecting means; Internet operations enabling means; video program providing (*serving*) means; data storing means (C. 6, L. 49 – C. 7, L. 7; C. 11, L. 24-27); graphics or charts creating means (C. 11, L. 45-46); audio producing means (C. 8, L. 47-48); video library using means (C. 2, L. 56-58); script generating means (C. 5, L. 44-45); and relationship generating means (C. 3, L. 26-30). Accessing said video program through Internet link obviously indicate server and user operating systems.

Claims 4 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marcus in view of Martino (US 6,044,382).

Claim 4. Marcus teaches all the limitations of claim 4, except that said patient specific data includes patient vital signs and patient medical performance.

Martino teaches a method and system for a data transaction assembly server, wherein patient vital signals, such as recorded heartbeat, are monitored and transmitted to a remote medical office, wherein patient instructions are generated based on said vital signals and distributed to the patient over the Internet (C. 26, L. 42-65; C. 7, L. 62).

It would have been obvious to one having ordinary skill in the art to modify Marcus to include that said patient specific data includes patient vital signs, because it would allow to tailor said video program to the patient specific health need.

Claims 9-10. Transmitting recorded heartbeat signals (ECG) obviously indicates means for producing graphical representations of the patient specific data (Martino; C. 26, L. 63).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form PTO-892).

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308- 2702.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to:

(703) 305-7687 [Official communications; including After Final
communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

SR



**JOHN G. WEISS
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